IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

MFA.No. 152 of 2007(A)

APPEA.603/2005 of APPELETTE TRIBUNAL FOR FOREIGN EXCHANGE NEW DELHI

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APPELLANTS:
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1. M/S.IDEAL EXPORTS, P.B.NO.8,
   MUHAMMA - 688 525, ALLEPPEY DISTRICT,
   KERALA, REPRESENTED BY ITS MANAGING PARTNER.

2. K.J.JOSEPH, MANAGING PARTNER,
   M/S.IDEAL EXPORTS, P.B.NO.8,
   MUHAMMA - 688 525, ALLEPPEY DISTRICT,
   KERALA.

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENTS:
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1. THE DEPUTY DIRECTOR OF ENFORCEMENT,
   SHASTRI BHAVAN, 3RD FLOOR, 3RD BLOCK,
   26, HADDOWS ROAD, CHENNAI - 600 006.

2. UNION OF INDIA, REPRESENTED BY ITS
   SECRETARY, DEPARTMENT OF REVENUE,
   NORTH BLOCK, NEW DELHI - 110011.

   BY ADV SRI.P.PARAMESWARAN NAIR, ASST.SOLICITOR GENERAL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN & T.R.RAMACHANDRAN NAIR, JJ.

M.F.A.No.152 OF 2007

Dated this the 14th day of December, 2007

JUDGMENT

Radhakrishnan, J.

This appeal is filed against the order of the Appellate Tribunal For Foreign Exchange(ATFFE). Appeal was preferred by the appellants herein under Section 19 read with Section 49(5) of the Foreign Exchange Management Act 1999 against the order dated 17/10/2003 passed by the adjudicating authority which is produced as Annexure 1 in the appeal. Appeal was preferred with an application for condonation of delay of 150 days. The Tribunal did not entertain the application for condonation of delay on the ground that appeal was preferred beyond the stipulated time in first proviso to sub section 2 of section 52 of the Foreign Exchange Regulation Act 1973 and hence the appeal was rejected.

2. Appellant herein has submitted that it had preferred the appeal under Section 19 read with Section 49(5) of the FEMA 1999 and therefore Tribunal had the jurisdiction to condone the delay even if appeal was preferred beyond forty five days as

stipulated under provided under Section 19 of the FEMA. Tribunal however did not entertain the application for condonation of delay holding that since the adjudication order was passed under Section 51 of the FER Act 1973, the appellate remedy available under that Act alone could be availed of and hence the Tribunal has no power to condone the delay. Tribunal took the view that the appeal was filed and taken in pursuance of Section 52 to the new forum of ATFFE who has replaced the FERA Board under the new Act of 1999 and remedy under old Act alone is available as specified by Section 6(e) General Clauses Act.

3. We are of the view that Tribunal has committed an error in holding that appeal preferred by the appellants herein under Section 19 of the FEM Act, 1999 is not maintainable and that he should have pursued the appeal under the provisions of the old Act. The mere fact that adjudication order was passed under the old Act does not mean that he should pursue his remedy under the old Act. Section 49 (5) of the FEM Act 1999 says that

"Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification,

inspection, order or notice made or any licence, permission,authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act."

4. Further sub section 49(5)(b) stated that any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act.

5. So far as this case is concerned, the mere fact that adjudication order was passed under old Act does not mean that party should file appeal under the old Act. On the other hand as per Section 49(5)(a) the proceedings initiated under the old Act shall be deemed to have been done, or taken under the corresponding provisions of the New Act. The order dated 17/10/2003 was passed after coming into force of the New Act and therefore the appellants can file appeal under the new Act. Further it may also be noted that even the order dated 17/10/2003 specifically says that appeal against the said order

shall lie to the Appellate Tribunal For Foreign Exchange and be preferred within 45 days on which the order was served and specific reference was made to Section 19 read with section 49(5) of the Foreign Exchange Management Act 1999. It is therefore clear that appellants have to prosecute their appeal under Section 19 read with section 49(5) as specifically stated in the appellate order dated 17/10/2003 and not under Section 52 of the old Act. It is clearly stated in the appeal memorandum itself that the appeal was preferred under Section 19 of the FEM Act, 1999.

In our view, the Tribunal had committed grave error in holding that the appeal could be prosecuted only under Section 52 of the FER Act 1973. In such circumstances, order passed by the Tribunal is set aside and the matter is remanded back to the Tribunal for fresh consideration of the appeal which was preferred under Section 19 of the FEM Act 1999. Proviso to section 19(2) specifically says that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty five days if it is satisfied that there was sufficient cause for not filing it within that period. In such circumstances, even though the appeal was filed belatedly, Tribunal has to consider as to whether the appellant has shown sufficient cause for not filing the appeal

within the stipulated time. With the above observation, Appeal is allowed, The impugned order is set aside. It is directed that the Tribunal shall take back the appeal and dispose of the same in accordance with law at the earliest. Annexure 6 order passed by the Tribunal is ordered to be maintained.

K.S.RADHAKRISHNAN
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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